

DATA LABEL: PUBLIC

**PUBLIC AND COMMUNITY SAFETY POLICY DEVELOPMENT AND SCRUTINY PANEL****SHORT-TERM LET LICENSING SCHEME – POLICY AND FEE STRUCTURE****REPORT BY HEAD OF CORPORATE SERVICES****A. PURPOSE OF REPORT**

To update the Panel on the progress of the council's implementation of the short-term let licensing scheme, to ask the Panel to note the proposed short-term let licensing policy detailed in Appendix 1, to note the results and responses to the public consultation as detailed in Appendix 2, and to note the proposed fee structure detailed in Appendix 3.

**B. RECOMMENDATION**

It is recommended that the Panel:

1. Notes that on 25 October 2022 Council Executive resolved that officers prepare a report for this PDSP in relation to short-term let licensing.
2. Notes the steps taken by officers in relation to the implementation of a short-term let licensing scheme in West Lothian, as required under the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 ("The Order");
3. Notes that consultation relating to the draft short-term let licensing policy has taken place with the public for a period of three weeks, as required under the Order, and is available in Appendix 2;
4. Notes that the scheme will be administered within Housing, Customer and Building Services, and therefore a change to the Scheme of Delegation is required;
5. Recommends to the Council Executive that the draft short-term let licensing policy as detailed in Appendix 1 as amended following comments received during the public consultation is approved; and
6. Recommends to the Council Executive that the draft fee schedule, which covers the cost of administering the scheme, and is included in Appendix 3; is approved;
7. Recommends that the Council Executive delegates authority to officers as set out in part D.5 of this report;
8. Notes that decisions under the scheme which require determination by committee will be referred to Licensing Committee.

## C. SUMMARY OF IMPLICATIONS

<b>I Council Values</b>	<ul style="list-style-type: none"> <li>• Focusing on our customers' needs</li> <li>• Being honest, open and accountable</li> <li>• Working in partnership</li> </ul>
<b>II Policy and Legal (including Strategic Environmental Assessment, Equality Issues, Health or Risk Assessment)</b>	<p>Civic Government (Scotland) Act 1982</p> <p>Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022</p>
<b>III Implications for Scheme of Delegations to Officers</b>	The Scheme of Delegations will require to be amended in accordance with B.7 and D.5.
<b>IV Impact on performance and performance Indicators</b>	None
<b>V Relevance to Single Outcome Agreement</b>	None
<b>VI Resources - (Financial, Staffing and Property)</b>	Staff resource of 1.0 FTE in year 1 will be recruited to administer the scheme, reducing to 0.3 FTE in years 2 and 3.
<b>VII Consideration at PDSP</b>	N/A
<b>VIII Other consultations</b>	Online public consultation Governance Manager Short-Term Lets Working Group

## D. TERMS OF REPORT

### D1 Background

The Scottish Government passed the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022 on 19 January 2022. It came into effect on 1 March 2022. The Order introduces a new licensing scheme for those operating premises offering accommodation (Hosts) on a short-term basis to guests. It was introduced primarily with a view to regulating holiday type lets but also includes bed and breakfast businesses (B&Bs), and affects letting activity from and after 1 October 2022.

On 25 October 2022 the Council Executive considered a report on the short-term let licensing scheme, and noted that the council is required to implement a short-term let licensing scheme as introduced by the Scottish Government and agreed that a further report would be submitted to the Panel following public consultation.

This report provides further details of the short-term let licensing scheme, including

the draft policy, an update on the consultation and responses to comments and the proposed fee structure.

## **D2 Details of the Licensing Scheme**

There are four types of short-term let licences that can be applied for, either: -

- Secondary Letting (letting out a property which is not someone's home),
- Home Letting (letting out a home for a period or periods for exclusive use),
- Home Sharing (letting out space within a house including B&B), and
- Home Letting and Home Sharing (a combination of the previous two options).

Hosts operating prior to 1 October 2022, can continue to do so provided they apply for a licence by 1 April 2023 under transitional arrangements. New hosts commencing short-term lets from 1 October 2022 are unable to operate until their licence application is determined. Local authorities have 12 months from receipt of applications to determine applications from existing hosts and 9 months from receipt of applications from new hosts.

A Short-term Let Licensing Working Group has been in operation since September 2022 and is working towards full implementation of the scheme. This group includes representation from a number of services across the council including Housing, Development Management, Legal Services, and Environmental Health.

## **D3 Policy and Consultation**

The Short-Term Let Licensing Working Group developed a draft short-term let licensing policy to outline the council's approach to Short-term Let Licensing in West Lothian and this was published online for consultation with the public and stakeholders for three weeks from 31 October 2022.

A total of 19 responses were received to the consultation, and these responses have been summarised, alongside officer responses in Appendix 2.

Following the close of the consultation the council has taken account of the comments received and amended the draft policy where appropriate. The main changes to the draft policy relate to the grounds on which temporary exemptions may be granted and the additional conditions which will be applied to all licences and temporary exemptions.

The amended draft policy is attached as Appendix 1.

#### **D4 Fee Structure**

In terms of the legislation the council's costs of administering the short-term let licensing scheme are to be met from application fees. Accordingly, officers have estimated the costs to administer the short-term let licensing scheme, with particular regard to the anticipated time and costs of administering, processing and determining applications, and overview of licensing requirements, and have used this to set a fee structure for the scheme. Fees will increase in line with annual inflationary increases agreed by council. Any other changes to the scheme fees required beyond that will be subject to appropriate scrutiny and approval by the Council Executive.

The draft fee schedule is outlined in Appendix 3, and following agreement by Council Executive will be publicised online.

#### **D5 Amendments to Scheme of Delegation**

It is proposed that Housing, Customer and Building Services should be responsible for administering and ensuring compliance with the Short-Term Lets Licensing scheme. The Scheme of Delegations to Officers will therefore need to be amended to allow:

- Housing, Customer and Building Services to process applications;
- the Head of Housing, Customer and Building Services to grant applications including variation applications, using delegated powers, where there are no objections or adverse reports from advisors and all suggested conditions are agreed by the applicant;
- the Head of Housing, Customer and Building Services to compile reports for all other applications in order that these can be determined by the Licensing Committee;
- the Head of Housing, Customer and Building Services to decide if, on good cause shown, a renewal application made within 28 days after the expiry of the licence should be treated as an application made before its expiry;
- in relation to any application requiring the display of site notices and where there is a defect in compliance, the Head of Housing, Customer and Building Services to instruct or agree to the notice being redisplayed by the applicants to allow the application to continue to be processed;
- the Head of Housing, Customer and Building Services to compile reports for the Licensing Committee where appropriate in order that decisions can be made about possible suspension or revocation of licences;
- officers from Housing, Customer and Building Services to investigate complaints about licensed short-term lets;
- officers from Housing, Customer and Building Services to issue enforcement notices where breaches of licence conditions are suspected

## **D6 Implementation**

A report will be presented to Council Executive on 20 December 2022 seeking approval of the policy and fee structure. It is anticipated that an online application process will open for applications to be submitted as soon as practicable thereafter.

Local authorities have 12 months from receipt of applications to determine applications from existing hosts and 9 months from receipt of applications from new hosts. Current hosts are able to continue operating as long as they apply for a licence by 1 April 2023. It is the intention of officers to prioritise applications made by new operators to ensure there is no detrimental impact on applicants.

## **E. CONCLUSION**

The Panel is asked to note the work undertaken by the Short-Term Lets Working Group to ensure that the council will be compliant with Order before 1 January 2023.

The Panel is asked to note that all relevant consultation comments have been responded to in Appendix 2. The draft policy has reviewed in the light of the responses and amended accordingly. The Panel is asked to note this progress and to recommend approval of the amended policy and fee structure to Council Executive.

## **F. BACKGROUND REFERENCES**

Civic Government (Scotland) Act 1982

Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022

[Report to Council Executive](#) – Short-term Lets Licensing Scheme. 25 October 2022.

Appendices/Attachments:

Appendix 1: Short-term Let Licensing Policy

Appendix 2: Short-term Let Licensing Consultation Responses and Comments

Appendix 3: Short-term Let Licensing Fee Structure

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Date: 8 December 2022

# Short -Term Lets Policy

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## 1. Introduction

**1.1** West Lothian Council (“the Council”) is required to regulate short-term lets (STLs) through the Civic Government (Scotland) Act 1982 (Licensing of Short-Term Lets) Order 2022 (the 2022 Order), which brings STL within the scope of licensable activities covered by the statutory provisions of the Civic Government (Scotland) Act 1982 (the 1982 Act).

**1.2** The Council Executive agreed this policy on xx December 2022 following a public consultation.

**1.3** The Council must prepare a statement of its policy with respect to the exercise of its functions in relation to the licensing of STL. This policy provides information on the following areas:

- licence duration and renewal
- temporary licences
- temporary exemptions
- additional conditions which will apply
- compliance and enforcement

**1.4** This policy provides guidance for prospective applicants, those who are granted a licence and those who may wish to object to or make representations regarding an application. The Council will have regard to the terms of its policy when determining applications. This policy will be reviewed and revised when necessary.

## 2. Definitions

Unless the Policy states otherwise, the definitions below shall apply throughout it:

**1982 Act** means the Civic Government (Scotland) Act 1982;

**2008 Regulations** means The Energy Performance of Buildings (Scotland) Regulations 2008;

**2010 Act** means the Equality Act 2010;

**2018 Act** means the Data Protection Act 2018;

**2022 Order** means The Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022;

**Accommodation** includes whole or any part of a premises;

**Aparthotel** means a residential building containing serviced apartments where (a) the whole building is owned by the same person, (b) a minimum of 5 serviced apartments are managed and operated as a single business, (c) the building has a shared entrance for the serviced apartments, and (d) the serviced apartments do not share an entrance with any other flat or residential unit within the building;

**Bothy** means a building of no more than two storeys which (a) does not have any form of (i) mains electricity, (ii) pipes fuel supply, (iii) piped mains water supply, (b) is 100 metres or more from the nearest public road (within the meaning of section 151 of the Roads (Scotland) Act 1984), and (c) is 100 metres or more from the nearest habitable building;



**Commercial Consideration** includes (a) money and (b) a benefit in kind (such as provision of a service, or reciprocal use of accommodation);

**Councillors Code of Conduct** means the code of conduct published by the Standards Commission for Scotland;

**“the Council”** means West Lothian Council, a Local Authority in terms of the Local Government (Scotland) Act 1994 having its principal place of business at West Lothian Civic Centre, Livingston, EH54 6FF as Licensing Authority

**Guest** means a person who occupies accommodation under a Short-Term Let;

**Home Letting** means a short-term let for the use, while the host is absent, of accommodation which is, or is part of, the host’s only or principal home;

**Home Sharing** means a short-term let consisting of the entering into of an agreement for the use, while the host is present, of accommodation which is, or is part of, the host’s only or principal home;

**Host** means a person who is the owner, tenant, or person who otherwise exercises control over occupation and use, of the accommodation which is the subject of a Short-Term Let;

**Hostel** means a building, other than a dwelling house, in which there is provided for persons generally or for any class or classes of persons (a) residential accommodation, and (b) either or both (i) meals, (ii) cooking facilities;

**Licensing Authority** means the licensing authority responsible for the processing of STL licences under the 1982 Act;

**Personal Care** means care which relates to the day to day physical tasks and needs of the person cared for (as for example, but without prejudice to that generality, to eating and washing) and to mental processes related to those tasks and needs (as for example, but without prejudice to that generality, to remembering to eat and wash);

**Refuge** means accommodation used wholly or mainly for persons who have been subject to an incident or pattern of incidents, of (a) controlling, coercive or threatening behaviour, (b) physical violence, (c) abuse of any other description (whether physical or mental in nature) or (d) threats of any such violence or abuse;

**Scottish Fire and Rescue Services** is a body corporate established under the Police and Fire Reform (Scotland) Act 2012 and having its registered headquarters at Westburn Drive, Cambuslang, G72 7NA;

**Serviced Apartment** means a flat or residential unit in respect of which (a) services are provided to guests (such as housekeeping, a telephone desk, reception or laundry), (b) each flat or unit contains its own washing, cooking and dining facilities separate from each of the other flats or units, and (c) there is a management system in place to prevent anti-social behaviour and to impose limits in respect of the maximum occupancy of the flats or units;

**Short-Term Let** or STL has the meaning given in section 6.1 of this Policy;

**Short-Term Let Control Area** has the meaning provided in section 26B of the Town and Country Planning (Scotland) Act 1997;

**Short-Term Let licence or “STL licence”** means a licence for a short-term let;

**Student Accommodation** means residential accommodation which has been built or converted predominantly for the purpose of being provided to students;

**Student Residential Tenancy** means a tenancy (a) the purpose of which is to confer on the tenant the right to occupy the let property while the tenant is a student, and (b) the landlord is (i) a university or constituent college, school or hall of a university; (ii) a central institution within the meaning of section 135(1) of the Education (Scotland) Act 1980, (iii) a designated institution within the meaning of section 44(2) of the Further and Higher Education (Scotland) Act 1992, (iv) an institution for the provision of further education within the meaning of section

135 (1) of the Education (Scotland) Act 1980 which is administered by the education authority, (v) a college of further education which is managed by a board of management in terms of part 1 of the Further and Higher Education (Scotland) Act 1992 , (vi) an association approved under Regulation 8 of the Further Education (Scotland) Regulations 1959, (vii) The Royal College of Surgeons of Edinburgh; or if planning permission for the construction, conversion or change of use of the building (or part of the building) of which the let property forms part was given on the basis that the let property would be used predominantly for housing students, and the landlord is an institutional provider of student accommodation;

**Part** means a part of this policy;

**Policy** means this short term lets policy;

**Police Scotland** means the police service of Scotland having its headquarters at Tulliallan Castle, Kincardine;

**Secondary Letting** means a short term let consisting of the entering into of an agreement for the use of accommodation which is not, or is not part of, a host's only or principal home;

**Type of Short-Term Let** means one of the following purposes: secondary letting; home letting; home sharing; or home letting and home sharing.

### **3. Purpose of Policy/Approach of the Council**

The Council's Policy identifies the Council's approach to the regulation of STL and the processes to be followed relating to applications for licences of this kind. In producing this Policy, the Council has taken into consideration the Scottish Government's Short Term Lets in Scotland Licensing Scheme Guidance dated March 2022.

This Policy provides guidance for potential applicants and members of the public on the licensing of STL.

The Council recognises that there are several objectives which the STL Licensing scheme should seek to achieve, and that the scheme should balance several factors:

- protecting public safety
- securing compliance with licence conditions
- treating complaints both from guests and neighbours effectively
- limiting the Council's regulatory burden in inspecting and monitoring

Accordingly, the Council will adopt a risk-based STL system where risk assessments will influence several aspects of the scheme. The general approach of the Council is 'light touch'.

### **4. Background to Licensing STL**

The Scottish Government brought into force The Civic Government (Scotland) Act 1982 (Licensing of Short- term Lets) Order 2022 on 1 March 2022. This 2022 Order introduced a licensing scheme for STL, which requires all STL to be licensed by 1 April 2024. Prior to the introduction of the 2022 Order, there was no requirement to licence STL in Scotland. The 2022 Order provides for changes to be made to the 1982 Act to reflect this new STL licence being introduced.

## **5. Consultation Process**

The Council undertook a public consultation from 31 October 2022 to 18 November 2022 (both dates inclusive) on the proposed policy in relation to the licensing of STL within West Lothian. This consultation sought views on a draft policy and sought responses on the following matters:

- temporary exemptions;
- temporary licences;
- duration of licences;
- additional conditions attached to a licence;
- maximum occupancy calculation; and
- any additional comments on the draft policy

The consultation document was available on the Council's Short-Term lets webpage and the Council consulted with a number of key stakeholders including local Community Councils, Police Scotland, Scottish Fire and Rescue Service, Visit West Lothian, West Lothian Chamber of Commerce, the Federation of Small Businesses and The Association of Scotland's Self-Caterers.

Following completion of the consultation, the Council at a meeting on xx December 2022 agreed this Short-Term Lets Policy.

## **6. What is a "Short-Term Let?"**

### **6.1 Definition of "Short -Term Let"**

It should be noted that the definition of a STL is defined in law and not by the Council. The 2022 Order defines a STL as follows:

"short-term let" means the use of residential accommodation provided by a host in the course of business to a guest, where all of the following criteria are met—

- (a) the guest does not use the accommodation as their only or principal home,
- (b) the short-term let is entered into for commercial consideration,
- (c) the guest is not—
  - (i) an immediate family member of the host,
  - (ii) sharing the accommodation with the host for the principal purpose of advancing the guest's education as part of an arrangement made or approved by a school, college, or further or higher educational institution, or
  - (iii) an owner or part-owner of the accommodation,
- (d) the accommodation is not provided for the principal purpose of facilitating the provision of work or services by the guest to the host or to another member of the host's household,
- (e) the accommodation is not excluded accommodation (see section 6.2 below), and
- (f) the short-term let does not constitute an excluded tenancy (see section 6.3 below).

For the purposes of the definition detailed above, the 2022 Order provides that a person ("A") is an immediate family member of another person ("B") if A is—

- (a) in a qualifying relationship with B,
- (b) a qualifying relative of B,
- (c) a qualifying relative of a person who is in a qualifying relationship with B, or
- (d) in a qualifying relationship with a qualifying relative of B.

Two people are in a qualifying relationship with one another if they are—

- (i) married to each other,
- (ii) in a civil partnership with each other, or
- (iii) living together as though they were married,

A "qualifying relative" means a parent, grandparent, child, grandchild or sibling,

- (c) two people are to be regarded as siblings if they have at least one parent in common,
- (d) a person's stepchild is to be regarded as the person's child,
- (e) a person ("C") is to be regarded as the child of another person ("D"), if C is being or has been treated by D as D's child

## 6.2 Excluded Accommodation

As detailed in section 6.1 above, the 2022 Order provides for certain accommodation to be regarded as "excluded accommodation" and therefore there is no need for the owners or operators of these types of accommodation to hold a STL licence.

Excluded accommodation means accommodation which is, or is part of—

- (a) an aparthotel,
- (b) premises in respect of which a premises licence within the meaning of section 17 of the Licensing (Scotland) Act 2005 has effect and where the provision of accommodation is an activity listed in the operating plan as defined in section 20(4) of that Act,
- (c) a hotel which has planning permission granted for use as a hotel,
- (d) a hostel,
- (e) residential accommodation where personal care is provided to residents,
- (f) a hospital or nursing home,
- (g) a residential school, college or training centre,
- (h) secure residential accommodation (including a prison, young offenders' institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation, or accommodation used as military barracks),
- (i) a refuge,
- (j) student accommodation,

- (k) accommodation which otherwise requires a licence for use for hire for overnight stays (not including an HMO licence granted under section 129 of the Housing (Scotland) Act 2006),
- (l) accommodation which is provided by the guest,
- (m) accommodation which is capable, without modification, of transporting guests to another location,
- (n) a bothy, or
- (o) accommodation owned by an employer and provided to an employee in terms of a contract of employment or for the better performance of the employee's duties.

### 6.3 Excluded Tenancies

As detailed in section 6.1 above, under the definition of STL within the 2022 Order, one of the criteria for a STL is that it does not constitute an excluded tenancy. The 2022 Order defines an “excluded tenancy” as a tenancy which falls within any of the following definitions:

- (a) a protected tenancy (within the meaning of section 1 of the Rent (Scotland) Act 1984);
- (b) an assured tenancy (within the meaning of section 12 of the Housing (Scotland) Act 1988);
- (c) a short-assured tenancy (within the meaning of section 32 of the Housing (Scotland) Act 1988);
- (d) a tenancy of a croft (within the meaning of section 3 of the Crofters (Scotland) Act 1993);
- (e) a tenancy of a holding situated outwith the crofting counties (within the meaning of section 61 of the Crofters (Scotland) Act 1993) to which any provisions of the Small Landholders (Scotland) Acts, 1886 to 1931) applies;
- (f) a Scottish secure tenancy (within the meaning of section 11 of the Housing (Scotland) Act 2001);
- (g) a short Scottish secure tenancy (within the meaning of section 34 of the Housing (Scotland) Act 2001);
- (h) a 1991 Act tenancy (within the meaning of section 1(4) of the Agricultural Holdings (Scotland) Act 2003);
- (i) a limited duration tenancy (within the meaning of section 93 of the Agricultural Holdings (Scotland) Act 2003);
- (j) a modern limited duration tenancy (within the meaning of section 5A of the Agricultural Holdings (Scotland) Act 2003);
- (k) a short-limited duration tenancy (within the meaning of section 4 of the Agricultural Holdings (Scotland) Act 2003);
- (l) a tenancy under a lease under which agricultural land is let for the purpose of its being used only for grazing or mowing during some specified period of the year (as described in section 3 of the Agricultural Holdings (Scotland) Act 2003);
- (m) a private residential tenancy (within the meaning of section 1 of the Private Housing (Tenancies) (Scotland) Act 2016); or
- (n) a student residential tenancy.

## **7. Different Types of STL Licences**

Under the 1982 Act there are four different types of STL licences that can be applied for. These are:

- (a) secondary letting;
- (b) home letting;
- (c) home sharing; or
- (d) home letting and home sharing

Home sharing and home letting involve the use of the host's only principal home. Secondary letting does not relate to the use of the host's principal home, it is a separate premises.

The application form will ask for you to confirm what type of STL licence you are applying for when submitting your application. You must select one of the above types of licence.

Further information on who can submit a STL licence application can be found at section 11.1 below.

## **8. Planning Considerations before Applying for a STL Licence**

### **8.1 Planning Permission**

In this section the following definitions apply:

**Flat** means a separate and self-contained residential premise whether or not on the same floor and forming part of a building from some other part of which it is divided horizontally; and

**House** means a residential premise with a dedicated private entrance which may be detached from any other premise or attached via a vertical separation but is not separated horizontally from any other premise and meets the terms of Class 9 of The Town and Country Planning (Use Classes) (Scotland) Order 1997.

Under the 1982 Act, a preliminary ground for refusing to consider a STL licence is that the use of the premises for a STL would constitute a breach of planning control under the Town and Country Planning (Scotland) Act 1997 by virtue of section 123 (1)(a) or (b) of that Act.

The Council is aware that in current legislation in relation to short term let accommodation:

- Unless for home sharing, all flats require planning permission;
- Houses do not require planning permission;
- Houses will need to be checked on a case-by-case basis to confirm that the definition of a house in 8.1 is met; and
- Renting room(s) in a house may not require planning permission.

To avoid the Council having to use the preliminary ground of refusing to consider applications based on planning grounds, the Council agrees that a pre-requisite in applying for a home

letting STL licence or a secondary letting STL licence, where the premises is a flat, is that the applicant must have:

- planning permission or a certificate of lawfulness issued by the Council as Planning Authority for the use of the premises as short term let accommodation, sui generis in terms of The Town and Country Planning (Use Classes) (Scotland) Order 1997; or
- a certificate of lawfulness confirming that the extent of the use does not amount to a material change of use.

Either the planning permission or certificate of lawfulness must be provided with your application. The Council will not accept your application without one of these documents, or confirmation that planning is not required, for these types of STL licences.

Subject to section 8.2 below, an applicant is unlikely to require planning permission for:

- home sharing where the premises is a flat or a house;
- secondary letting where the premises is a house, or
- home letting where the premises is a house.

## 8.2 Short-Term Let Control Areas

Under The Town and Country Planning (Short-term Let Control Areas) (Scotland) Regulations 2021 the Planning Authority can introduce Short-term Let Control Areas which would require any change of use for a premises to obtain planning permission. In addition, Short-term Let Control Areas would require all STL licence applications, for any of the four types of licences to have planning permission (where required) before applying for a licence. At present there are no Short-term Let Control Areas in place in West Lothian.

If any Short-term Let Control Areas are introduced in West Lothian in the future, then applicants and licence holders should note that where planning permission may not be required at present for a STL licence (as detailed in section 8.1 above) this position could change. These licence holders should note that it is a mandatory condition of a STL licence, that if the premises falls within a Short-term Let Control Area the licence holder must ensure that an application for planning permission under the Town and Country Planning (Scotland) Act 1997 has been made or is in force. This means that if a Short-term Let Control Area is introduced during the period of your STL licence, where planning permission was not initially required at the time of applying and being granted a STL licence, detailed in section 8.1 above, you would have to apply for planning permission. If you did not apply for planning permission or a certificate of lawfulness as applicable, or if you continued operating your STL once planning permission or a certificate had been refused you would be in breach of a licence condition and enforcement action may be taken.

The Council recognises the current position in West Lothian regarding Short-term Let Control Areas could change and will ensure this policy is reviewed to take account of any Short-term Control Areas that may be introduced in West Lothian in the future.

It should be noted that the introduction of any Short-term Let Control Area would fall under the Council as Planning Authority to implement, not the Council as the Licensing Authority.

## **9. Temporary Exemptions**

Under paragraph 1A of Schedule 1 of the 1982 Act, the Council can grant a temporary exemption to the requirement to have a STL licence. Under the terms of the 1982 Act, temporary exemptions can be issued for a specified single continuous period not exceeding 6 weeks in any period of 12 months. The 6 weeks limit on a licence is a maximum, and not a default.

The Council will only consider granting a temporary exemption from the requirement to obtain a STL licence for specific circumstances for all four types of letting mentioned in paragraph 7 above. These circumstances are -

- Major sporting events in West Lothian, or in surrounding areas
- Major events in West Lothian or in surrounding areas
- To allow first time operators a short-term let trial period before applying for a full licence

If the application for a temporary exemption does not relate to one of the above circumstances applicants can expect that their applications will be refused.

Any temporary exemption which is issued will be subject to the mandatory conditions of licence as set out in the 1982 Act. Temporary exemptions will contain all the additional licence conditions set out in Appendix 2 below and may be subject to bespoke conditions and some of the additional conditions detailed in Appendix 3 below.

The Council will aim to process and determine a temporary exemption application within 3 months of a fully completed application being received. However, in order to ensure as far as possible that applications are able to be determined in advance of the event it is recommended that applications are made at least four months prior to the event.

## **10. Temporary STL Licences**

Under paragraph 7 of Schedule 1 of the 1982 Act, the Council can grant temporary STL licences. Such licences can be granted for periods not exceeding 6 weeks and may be able to be processed quicker as the site notice provisions do not apply. Temporary licences cannot be renewed but where a competent application is also made for a full STL licence within the application period or during the time that a temporary licence is in effect the temporary licence continues in effect until the full licence application is determined.

The Council will issue temporary licences and any temporary licence which is issued will be subject to the mandatory conditions of licence, as set out in the 1982 Act. Temporary licences will also contain all the additional licence conditions set out in Appendix 2 below and may be subject to bespoke conditions and some of the additional conditions detailed in Appendix 3 below.



## **11. Application Process**

### **11.1 Making an Application**

All applicants for STL licences (including renewals, temporary exemptions, temporary licences and variations), irrespective of the type of STL licence being applied for (secondary letting, home letting, home sharing; or home letting and home sharing) must complete the STL licence application form available online at the [Short-term Lets webpage](#) together with the appropriate documentation and fee. Please see the webpage for details of fees.

An application for a STL Licence, under the legislation, can be made by a person other than the owner of the premises. Where this is the case, the applicant must ensure they provide the relevant consents from the owner(s) as detailed in section 11.3 (d).

Part of the application form will require the applicant to provide a declaration to the Council that they can comply with the mandatory conditions attached to a STL licence, including all the documentation detailed within these conditions. Further information on the mandatory conditions can be found at section 12.1. Applicants should be mindful that the Council's officers can request any documentation referred to in the mandatory conditions at any time during the consideration of an application or the period of the licence, if granted. Applicants should also note that a breach of a condition is a criminal offence under the 1982 Act.

It should be noted that if an applicant has had a STL licence application refused by the Council then the applicant cannot apply for a STL licence within one year of the date of the refusal unless there has been a material change of circumstances. An applicant who has been refused must contact the Council by email to [stl@westlothian.gov.uk](mailto:stl@westlothian.gov.uk) if they wish to apply within a year of the date of refusal. The Council determines if the change is material, not the applicant.

There is information about rights of appeal on the Council's Short-Term Let Licensing webpage.

Applicants who operated a STL prior to 1 October 2022 will be given a provisional STL licence number once their fully completed STL licence application is submitted to the Council, with all the required documentation as detailed in section 11.3 below, before 1 April 2023. This is to enable those operators to continue to operate a STL while their application is being considered. It should also be noted that this provisional STL licence number will cease when the application is determined.

### **11.2 Renewal**

Under the 1982 Act, if a competent application for a STL licence renewal application has been made to the Council before the expiry date of the current licence, the licence will continue in effect until a final decision has been made by the Council on the renewal application. If a renewal application is refused the existing licence will remain in effect for a period of 28 days from the date of the decision. This is the appeal period, and where an appeal has been lodged, the licence remains in effect until such time as the appeal has been determined by the Court.

The process for applying for a renewal of a STL licence is the same as when applying for a new STL licence. Guidance for applicants is on the Council's [Short-term Lets webpage](#). In relation to the documentation that should be submitted with a renewal application please see section 11.3 below.

### 11.3 Documentation Required with an Application

Applicants should be aware that an application will not be treated as a competent application and processed without the following documentation (where applicable):

#### (a) Planning Permission or a Certificate of Lawfulness

In relation to all applications for STL licences involving home letting or secondary letting where the premises is a flat, the applicant must provide evidence that the premises has planning permission or a certificate of lawfulness issued by the Planning Authority for the use of the premises as short stay accommodation or a certificate of lawfulness confirming that the extent of the use does not amount to a material change of use. This must be submitted with the STL application. As detailed in section 8, an application submitted without either of these documents will not be considered by the Council.

#### (b) Floor/Layout Plan

All applicants for the grant of a STL licence will be required to submit a floor plan of the premises, scale 1: 50 showing at least the following:

- Rooms – living area/bedrooms/bedrooms available for guests;
- Room sizes, including bedrooms;
- Fire escapes;
- Location of heat/smoke alarms;
- Location of fire doors; and
- Location of stairs/elevators/lifts;

For renewal applications, where there has been no change to the layout of the premises a floor plan would not be required with the application.

For variation applications, where the variation relates to a change to the layout of the premises, a floor plan would be required with the application.

#### (c) Evidence of Operation as a STL before 1 October 2022

Where an applicant has been operating a STL before 1 October 2022, the applicant will be required to certify this when submitting a STL licence application. Checks to establish this may be made by the Council.

(d) Consent from Owner(s)

Where owner is not the applicant

As detailed in section 11.1 an application for a STL licence does not have to be made by the owner of the premises. However, where an applicant other than the owner of the premises applies to the Council for a STL licence, the applicant must provide consent from the owner, or if the title to the premises is held by more than one owner, all owners or a person authorised to act on behalf of the owner(s) with written confirmation from one of the owners that the agent is authorised to act for all the owners.

Where one or more owners

Where the premises is owned by more than one person (shared ownership) all owners will have to declare that they consent to the application, if one owner is submitting the application. These declarations would be required with the application.

**It is the responsibility of the person making the application to give accurate information on the form (see the declaration section on the form) and this may involve making enquiries with the owner(s) as to whose name title to the property is held in. Please note that the Council may require additional documentation to be submitted with an application. Where this is the case, the Council will advise the applicant directly of this.**

11.4 Duration of Licences

Under the 1982 Act the Council can grant a STL licence for a period of three years or such shorter period as the Council determines.

In relation to applications to renew STL licences, the Council can extend the duration of a STL licence for a period of three years or such shorter other period as the Council determines.

The Council's policy is that it will grant all STL licence applications for a period of three years unless there is a good reason for granting them for a shorter period.

The law does not allow licences granted under the 1982 Act to be transferred. In the event of the death of an STL licence holder, the STL licence will be deemed to have been granted to the executor and will remain in force for a period of 3 months from the date of the licence holder's death, unless previously suspended or revoked. Where the Council is satisfied that it is necessary for the purpose of winding up the estate, on request, in writing, by the executor, the Council may extend the period further.

Licences held in the names of companies, partnerships and organisations will come to an end when the legal entity holding the licence is dissolved or otherwise no longer exists in law. Applicants should seek legal advice regarding which name a licence should be held in.

### 11.5 Variation

At any time, the holder of a STL licence can apply to the Council to vary the terms of the licence. There is no requirement to advertise a variation however, the Council will consult with Police Scotland and the Scottish Fire and Rescue Service before determining a variation application.

## **12. Conditions Attached to an STL Licence**

### 12.1 Mandatory Conditions

Under the 2022 Order there are certain conditions which the Council must attach to a STL licence, irrespective of the type of STL licence granted, whether it is secondary letting, home letting, home sharing or home letting and home sharing. These are known as “mandatory conditions” and are detailed at Appendix 1.

It should be noted that the Council has no power to amend these mandatory conditions.

All applicants should ensure, prior to applying to the Council for a STL licence of any type, that they are able to comply with the mandatory conditions attached to a licence. Applicants should also note that in terms of listing their premises as a licensed STL, as required under mandatory condition 14, the listing must include the licence number (provided by the Council) and the valid energy performance certificate rating (if this is required for the premises in accordance with the 2008 Regulations).

### 12.2 Additional Conditions

To cater for more localised matters, the Council is also able to attach additional conditions to STL licences where necessary. The additional conditions detailed in Appendix 2 will be applied to all licences.

The Council's advisors may in certain circumstances suggest additional conditions for particular premises when they are responding to applications and any suggested conditions will be copied to applicants for comments.

A number of possible conditions are contained in Appendix 3 which may be suggested by advisors for particular premises. The Council's advisors may also suggest bespoke conditions for unusual properties.

It should be noted that the Council cannot impose an additional condition which limits the number of nights a premises may be used for secondary letting.

### 12.3 Maximum Capacity

One of the mandatory conditions that is attached to all STL licences is that the licence holder must ensure that the number of guests residing on the premises does not exceed the number specified in the licence.

All applications will ask the applicant to confirm the number of guests they would like to accommodate in the premises. The Council do however have to provide a maximum number of guests who can stay on the premises at any one time on the STL licence when it is issued. This is known as the “maximum capacity”. The Council, taking into account the information provided on the application form and layout plan, will calculate the maximum capacity in the following way:

The maximum number of persons in relation to a premises is whichever is the lesser of (a) or (b):

- I. The number specified in Table 1 below in relation to the number of rooms in the house available as sleeping accommodation for guests,
- II. The aggregate for all such rooms in the premises of the numbers specified in column 2 of Table 2 in relation to each room of the floor area specified in column 1.

Please note that any room with a floor area less than 50 square feet (4.65 sq. M.) cannot be considered for calculating the capacity within table 1 or 2 below.

It should be noted that a room is available as sleeping accommodation if it is of a type normally used in the premises as a living room or as a bedroom. The Council will not include children under 2 years of age when calculating the maximum capacity.

Table 1

<b>Number of rooms (this should include living room and bedrooms if used as sleeping accommodation within the premises)</b>	<b>Number of persons</b>
1	2
2	3
3	5
4	7
5+	2 for each room

Table 2

Column 1 - Floor area of each room	Column 2 - Number of persons
90 sq. ft. (8.36 sq. m.) or more	2
50 sq. ft. (4.65 sq. m.) or more but less than 90 sq. ft (8.36 sq. m.).	1

#### 12.4 Breach of a STL Licence Condition

The 1982 Act gives the Council power to serve an Enforcement Notice on a STL licence holder, where the Council considers that a condition of the STL licence has been breached. The Enforcement Notice will detail the following:

- (a) the matters constituting the breach or likely breach;
- (b) the action to be taken by the licence holder; and
- (c) the date by which the action must be taken.

It should be noted that a breach of a condition is a criminal offence under the 1982 Act however an Enforcement Notice can still be served on the licence holder even if criminal proceedings have begun or are taking place.

As detailed in section 15 below, the Council will only take enforcement action where it is deemed necessary and appropriate.

### **13. Unlicensed STL**

The Council recommends that people take their own independent legal advice on whether or not their accommodation would require a STL licence. The Council cannot provide legal advice on whether or not a premises requires a STL licence. Operating without a licence when one is required by the law is a criminal offence. Decisions on whether unlicensed hosts will be reported to the Procurator Fiscal will be made by Police Scotland. Unlicensed STLs should be reported to Police Scotland. The Council has no power to take any action against unlicensed STLs.

### **14. Monitoring and Compliance of Licensed STL**

Taking into account section 12.4 above, the Council recognises the importance of having compliance issues monitored in order to ensure licensed STL are not causing an unnecessary nuisance to the community, nearby residents or neighbours. As such it will carry out a risk-based approach to enforcement, with officers using a range of escalating informal measures, prior to an Enforcement Notice being issued and subsequently consideration of a suspension or revocation of the licence. A licence holder must be able to provide any documentation referred to in the mandatory conditions, to the Council upon request. Failure to do so may

result in an Enforcement Notice being issued or the STL licence being suspended or revoked. Council officers may conduct inspections of STLs where issues have been identified either in the application or as a result of complaints and a fee will be charged for such inspections.

## **15. Complaints**

The Council considers that it is essential that licensed STL are operated in accordance with the 1982 Act and the licence conditions. The Council's powers under the 1982 Act represent a key protection for the community where problems relating to the operation of a STL cannot be resolved amicably by the licence holder and the complainer.

### Complaints from guests

In the first instance, the Council would expect any concerns from guests to be raised with the host or operator and where this cannot be resolved they should contact the Council.

### Complaints from neighbours

In the first instance, the Council would expect concerns from neighbours to be raised with the licence holder and where this cannot be resolved they should contact the Council.

Information on how to make a complaint can be found on the Council's [Short-term Lets webpage](#).

## **16. Fees**

The Council's fee structure will be published on the [Short-term Lets webpage](#).

Note that any fees charged are in respect of the processing and administration of an application and will not be refunded in the event that an application for a licence is not granted.

## **Appendix 1 – Mandatory Conditions**

### Agents

1. Only those named as a holder of the licence can carry out the day-to-day management of the short-term let of the premises.

### Type of Licence

2. The holder of the licence may only offer the type of short-term let for which the licence has been granted.

### Fire Safety

3. The holder of the licence must ensure the premises has satisfactory equipment installed for detecting, and for giving warning of—
  - (a) fire or suspected fire, and
  - (b) the presence of carbon monoxide in a concentration that is hazardous to health.
4. The holder of the licence must keep records showing that all upholstered furnishings and mattresses within the parts of the premises which are for guest use, or to which the guests are otherwise permitted to have access, comply with the Furniture and Furnishings (Fire Safety) Regulations 1988

### Gas Safety

5. Where the premises has a gas supply—
  - (a) the holder of the licence must arrange for an annual gas safety inspection of all gas pipes, flues and appliances in the premises,
  - (b) if, after an annual inspection, any appliance does not meet the required safety standard, the holder of the licence must not allow a short-term let of the premises until the works necessary to bring the appliance to the required safety standard have been carried out.

### Electrical Safety

6. Where there are electrical fittings or items within the parts of the premises which are for guest use, or to which the guests are permitted to have access, the holder of the licence must—
  - (a) ensure that any electrical fittings and items are in—
    - (i) a reasonable state of repair, and
    - (ii) proper and safe working order,
  - (b) arrange for an electrical safety inspection to be carried out by a competent person at least every five years or more frequently if directed by the competent person,
  - (c) ensure that, following an electrical safety inspection, the competent person produces an Electrical Installation Condition Report on any fixed installations,



- (d) arrange for a competent person to—
    - (i) produce a Portable Appliance Testing Report on moveable appliances to which a guest has access, and
    - (ii) date label and sign all moveable appliances which have been inspected.
7. In determining who is competent, the holder of the licence must have regard to guidance issued by the Scottish Ministers under section 19B(4) of the Housing (Scotland) Act 2006.

Water Safety: Private Water Supplies

8. Where the premises are served by a private water supply, the licence holder must comply with the requirements on the owners of private dwellings set out in the Water Intended for Human Consumption (Private Supplies) (Scotland) Regulations 2017.

Water Safety: Legionella

9. The holder of the licence must assess the risk from exposure to legionella within the premises, whether or not the premises are served by a private water supply.

Safety and Repair Standards

- 10.
- (1) The holder of the licence must take all reasonable steps to ensure the premises are safe for residential use.
  - (2) Where the premises are subject to the requirements of Chapter 4 of Part 1 of the Housing (Scotland) Act 2006, the holder of the licence must ensure that the premises meet the repairing standard.

Maximum Occupancy

11. The licence holder must ensure that the number of guests residing on the premises does not exceed the number specified in the licence.

Information to be Displayed

12. The holder of the licence must make the following information available within the premises in a place where it is accessible to all guests—
- (a) a certified copy of the licence and the licence conditions,
  - (b) fire, gas and electrical safety information,
  - (c) details of how to summon the assistance of emergency services,
  - (d) a copy of the gas safety report,
  - (e) a copy of the Electrical Installation Condition Report, and
  - (f) a copy of the Portable Appliance Testing Report.

### Planning Permission

13. Where the premises is in a short-term let control area for the purposes of section 26B of the Town and Country Planning (Scotland) Act 1997 ("the 1997 Act"), the holder of the licence must, where the use of the premises for a short-term let requires planning permission under the 1997 Act, ensure that either—
  - (a) an application has been made for planning permission under the 1997 Act and has not yet been determined, or
  - (b) planning permission under the 1997 Act is in force.

### Listings

14.
  - (1) The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the short-term let of the premises includes—
    - (a) the licence number, and
    - (b) a valid Energy Performance Certificate rating if an Energy Performance Certificate is required for the premises, in accordance with the Energy Performance of Buildings (Scotland) Regulations 2008.
  - (2) The holder of the licence must ensure that any listing or advert (whether electronic or otherwise) for the short-term let of the premises is consistent with the terms of the short-term let licence.

### Insurance

15. The holder of the licence must ensure that there is in place for the premises—
  - (a) valid buildings insurance for the duration of the licence, and
  - (b) valid public liability insurance for the duration of each short-term let agreement.

### Payment of Fees

16. The holder of the licence must pay any fees due to the licensing authority in respect of the licence on demand.

### False or Misleading Information

17. The holder of the licence must not provide any false or misleading information to the licensing authority.

### Interpretation for the Mandatory Conditions

In these conditions —

**"Electrical Installation Condition Report"** means a report containing the following information—

- (a) the date on which the inspection was carried out,
- (b) the address of the premises inspected,

- (c) the name, address and relevant qualifications of the person who carried out the inspection,
- (d) a description, and the location, of each installation, fixture, fitting and appliance inspected,
- (e) any defect identified,
- (f) any action taken to remedy a defect,

**"Energy Performance Certificate"** means a certificate which complies with regulation 6 of the Energy Performance of Buildings (Scotland) Regulations 2008,

**"Gas Safety Report"** means a report containing the following information—

- (a) the date on which the appliance or flue was checked,
- (b) the address of the premises at which the appliance or flue is installed,
- (c) a description of and the location of each appliance or flue checked,
- (d) any safety defect identified,
- (e) any remedial action taken,
- (f) confirmation that the check undertaken complies with the requirements of an examination of—
  - (i) the effectiveness of any flue,
  - (ii) the supply of combustion air,
  - (iii) subject to (iv) below its operating pressure or heat input or, where necessary, both,
  - (iv) if it is not reasonably practicable to examine its operating pressure or heat input (or, where necessary, both), its combustion performance,
  - (v) its operation so as to ensure its safe functioning,
- (g) the name and signature of the individual carrying out the check, and
- (h) the registration number with which that individual, or that individual's employer, is registered with a body approved by the Health and Safety Executive for the purposes of regulation 3(3) of the Gas Safety (Installation and Use) Regulations 1998,

**"Holder of the Licence"** means any person to whom a short-term let licence has been granted or jointly granted,

**"Home Letting"** means a short-term let consisting of the entering into of an agreement for the use, while the host is absent, of accommodation which is, or is part of, the host's only or principal home,

**"Home Sharing"** means a short-term let consisting of the entering into of an agreement for the use, while the host is present, of accommodation which is, or is part of, the host's only or principal home,

**"Premises"** means the accommodation which is the subject of an application for a short-term licence or the subject of a short-term licence,

**"Repairing Standard"** means the steps which the holder of the licence is required to take to comply with the obligations placed on the holder by Chapter 4 of Part 1 of the Housing (Scotland) Act 2006,

**"Secondary Letting"** means a short-term let consisting of the entering into of an agreement for the use of accommodation which is not, or is not part of, the licence holder's only or principal home,

**"Short-Term Let"** has the same meaning as in article 3 of the Civic Government (Scotland) Act 1982 (Licensing of Short-term Lets) Order 2022,

**"Short-Term Let Licence"** means a licence for a short-term let, and

**"Type of Short-Term Let"** means one of the following purposes—

- (a) secondary letting,
- (b) home letting,
- (c) home sharing, or
- (d) home letting and home sharing.

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## **Appendix 2 – Additional Conditions (Which Will Be Applied to All Licences)**

### **Littering & Waste Disposal**

1. The licence holder shall take all reasonable steps to ensure that the appropriate refuse facilities (for both general and recyclable refuse) in line with West Lothian Council's current policy on the storage and collection of refuse, are available at all times either in the communal areas surrounding the premises or within the premises boundary where there are no communal areas, for the disposal of refuse by guests.
2. The licence holder shall ensure that the refuse facilities at the premises and in the communal surrounding areas of the premises are used appropriately at all times by the guests.

### **Antisocial Behaviour**

3. The licence holder shall take all necessary measures to ensure that no antisocial behaviour, noise or other statutory nuisance arises within or from the licensed living accommodation or within any common parts of the property.

### **Dealing with complaints**

4. The licence holder must act reasonably in relation to the management of the licensed premises in respect of any dealings with neighbouring residents of the premises.
5. The licence holder must take reasonable steps to investigate any complaint made by residents of neighbouring properties relating to the behaviour of the licence holder's guests at or in the vicinity of the licensed premises.

### **Inspections**

6. The licence holder shall ensure that access is permitted to West Lothian Council Officers in connection with carrying out statutory duties, whether any inspections are scheduled or unannounced.

**Appendix 3 – Possible Additional Conditions Which Advisors May Recommend For Particular Premises**

1. The licence holder shall provide guests, no later than two days from the booking date, with an information leaflet on how to dispose of refuse (including general and recyclable refuse) properly and appropriately from the licensed premises.
2. The licence holder shall act reasonably in relation to the payment of their share of all maintenance costs, insurance costs and repair costs of areas in common relative to the premises and in all dealings with any other owners and any relevant factor.
3. The licence holder shall ensure that any undisputed invoice or notification of their share of maintenance costs, insurance costs and repair costs received in respect of common areas relative to the premises is paid in full in adherence to the payment terms stipulated.
4. The licence holder shall ensure that all common areas are regularly inspected and that any defects are brought to the attention of the other owner(s) and any relevant factor, with the licence holder making payment of the appropriate share of any costs to rectify such defects.
5. The licence holder must submit a certificate of compliance to West Lothian Council within 14 days of the licence taking effect confirming that they have provided emergency contact details to all neighbouring residents of the premises.
6. The licence holder must take reasonable steps to ensure that guests do not first arrive or depart from the property between the hours of 11pm to 7am. The licence holder must provide this information as part of their booking terms and conditions. Reasonable steps, allow for exceptions, such as significantly delayed transport.

## Appendix 2

## SUMMARY OF SHORT -TERM LET CONSULTATION RESPONSES

	Question	Responses	Reasons against/for	Comments from Short-Term Lets Working Group
1.	Should West Lothian Council issue Temporary licences?	19  16 in favour (84%)	<p><b>Reasons against</b></p> <p>“Housing should be for long term living”</p> <p>“Accommodation in West Lothian is in extremely short supply and overpriced in the private sector. Granting second home usage for holiday lets etc will only make matters worse for local residents to be able to afford accommodation in the location they work.”</p> <p>“Full licence should be applied for and there is adequate time allowed to operate until a licence is granted”</p>	<p>Apart from as Planning Authority, West Lothian Council does not have power to stipulate what property is used for. Planning powers are extremely limited in this regard.</p> <p>The Scottish Government have made this licensing scheme mandatory across the country so the council has no choice but to process the licence applications.</p> <p>The legislation allows for temporary licences to be granted and they last for a maximum of 6 weeks unless an application for a full licence is applied for at the same time or during the period of effect of the temporary licence. Temporary licences can be processed quicker to allow new operators to start operating sooner. This is because the usual site notice provisions do not apply. However, once full licences are applied for site notices do have to be displayed at the property allowing objections to be made by neighbours. Temporary applications can also be used by operators wishing to try out letting on a temporary basis. The same mandatory conditions apply to such licences.</p>

2.	Should there be additional conditions for Temporary Licences?	16 2 in favour (12%)	<p><b>Reasons for</b></p> <p>“I ticked yes, but would want to be sure that all the mandatory conditions full licence holders are being obliged to fulfil will still apply. I can't actually envisage the need for these in West Lothian but can understand the need for them in somewhere like Edinburgh during festival times when the supply of self-catering could otherwise be insufficient.”</p>	<p>No additional conditions were suggested.</p> <p>During the first year of the scheme all licences granted will be subject to 6 additional conditions (see 5 Below). Temporary Licences will also be subject to the same 6 additional conditions.</p>
3.	Should West Lothian Council issue Temporary Exemptions?	19 10 in favour (53%)	<p><b>Reasons against</b></p> <p>“all lets should be licenced”</p> <p>“It could result in unsafe properties which have not had to go through the same hoops as everyone else hosting guests on a regular basis. A bad experience in an unsuitable property would badly reflect on West Lothian and complaints could be made to the Council and my impression is that the Council is overstretched don't have the time</p>	<p>The legislation allows for temporary exemptions to be granted and they are for a maximum of 6 weeks in any year (see 4 below). The Council's policy intends to permit temporary exemptions only for particular events taking place in and around West Lothian or to allow first time operators the chance to try short-term letting before making a full application otherwise temporary or full licences would have to be applied for.</p> <p>All applications for temporary exemptions are subject to the same checks and the same mandatory conditions as short-term let licences.</p>



			<p>and staffing to deal with what could be a complex complaint needing much investigation”</p> <p>“People will abuse this”</p> <p>“Housing is a basic right and should not be used for short term profiteering. Homes should either be let with the tenant determining the stay duration”</p> <p>“Why should a temporary operator be exempt from the requirements of the short-term let licensing scheme? Full time operators are hardworking and are open all year round including during quiet times of year when the revenue we make is negligible. Why should these operators who wish to 'jump on the bandwagon' during busy periods be exempt from requirements that we have to adhere to? Surely this is why this licencing scheme has come about! Due to the rush of par time operators flooding the market in Edinburgh due to certain events.”</p> <p>“Unfair on those who are licensed and who are applying for the licence at great cost.”</p>	
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			<p>“Because STL operators should qualify for licence no matter what events are in nearby.”</p> <p>“because there would be no guarantee that they meet health and safety”</p> <p><b>Reasons for</b></p> <p>“urgent needs arise”</p>	
4.	What reasons do you think justify an exemption?	10	<p><b>Reasons suggested</b></p> <p>Major Sporting Events in West Lothian, or in surrounding areas (e.g. Commonwealth Games) (6 out of 10, 60%)</p> <p>Major International Events in West Lothian or in surrounding areas (e.g. COP26) (7 out of 10, 70%)</p> <p>To allow first time operators the chance to try Short-term Letting before making a full application (7 out of 10, 70%)</p>	Having reviewed the responses Temporary Exemptions will be granted if they fall into the suggested three categories. The policy has been updated to reflect this and to state that applications for exemptions which do not fall within one of the categories will be refused.
5.	Should there be additional conditions for Temporary Exemptions?	10 3 in favour (30%)	<p><b>Suggested conditions</b></p> <p>Conditions to prevent</p> <ul style="list-style-type: none"> <li>• Anti-Social Behaviour;</li> </ul>	Having reviewed the comments on conditions it is recommended that during the first year of the scheme Temporary Exemptions in line with all licences granted will be subject to 6 additional conditions detailed in the policy. These conditions relate to

			<ul style="list-style-type: none"> <li>• Damage or alteration to Property;</li> <li>• Failure to maintain the property;</li> <li>• Failure to maintain/contribute to communal upkeep;</li> <li>• Noise;</li> <li>• Unlawful Activity;</li> </ul> <p>and a condition regarding waste management.</p>	<ul style="list-style-type: none"> <li>• Littering &amp; waste disposal</li> <li>• Anti-social behaviour</li> <li>• Dealing with complaints</li> <li>• Inspections</li> </ul> <p>The policy has been updated to reflect this.</p> <p>In responding to applications advisors can recommend that any of the remaining additional conditions suggested in the policy or bespoke ones can be applied in appropriate circumstances.</p>
6.	Do you have any comments to make on the proposed additional conditions for all STL licences?	11	<p><b>Comments</b></p> <p>“My property is very rural and there are certain conditions that don't really make any sense to my situation. mainly the time constraints for arrival and departure.”</p> <p>“Not sure whether it is an additional condition but the level of detail required on room sizes, etc for short term let properties that have been operating successfully for many years is onerous in the extreme and would be costly for the operator to find and pay for someone to check this out. I feel an exception should be made for those properties who belong to VisitScotland's Quality Assurance</p>	<p>Having reviewed the comments on conditions it is recommended that during the first year of the scheme all licences granted will be subject to 6 additional conditions as detailed in the amended policy rather than the 14 additional conditions consulted on. See 5 above.</p> <p>The other additional conditions in the policy can be recommended by advisors in appropriate circumstances. The policy has been updated to reflect this.</p> <p>In relation to the comments regarding the detail required in plans the reason for this is to avoid inspections of all premises which would have resulted in significantly higher fees. The legislation requires the council to set maximum occupancy levels and detailed plans are required to enable the council to do so without inspections.</p>

			<p>Scheme as they have inspected the properties and are happy with the number of guests a property can accommodate. which is stated on their website. The seemingly rigid 11 pm to 7 am ban on arrival time should have a lot more flexibility. I can understand it in somewhere like a tenement block where it could disturb neighbours but not in a rural property which might not have a near neighbour for quarter of a mile. Do we really want to appear unwelcoming to someone whose flight gets in during the early hours... or someone who find it easier to drive up after work on a Friday to avoid busy roads on the Saturday, or who prefer driving with their children asleep in the back of the car on a quieter road at night.”</p> <p>“I can't imagine many parts of West Lothian need this, but it's fine to have the regulations in place in case "AirBnB" blight does impact some part of the council's area.”</p> <p>“Any additional conditions should be made clear to those applying. The control areas if any should be stated. The requirement for</p>	<p>Additional conditions which may be applied will be published on the Council’s webpage and will be set out within the Short Term Let Policy.</p>
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			planning permission seems excessive.”	The Short-term Let Policy cannot deal with planning issues as that is separate legislation.
7.	Are there any other additional conditions which you consider the council should include in its policy?	10	<b>Comments</b>  “I think occupiers of neighbouring properties should be consulted before permission is granted as I can foresee issues with noise, litter and parking”	The legislation stipulates that site notices must be displayed at the premises to allow neighbours to submit objections or representations to applications. The government considered whether neighbours should be notified but concluded that site notices were sufficient notice to neighbours. The council therefore cannot request that neighbours are notified.
8.	Do you have any comments to make on the council’s proposal regarding duration of Short-term Let Licences? If you disagree with the proposal please provide reasons.	10  Most agreed with a minimum of a three-year licensing period, and highlighted that a longer period on renewal would be useful. Respondents also called out how change of ownership should require a fresh application – although this may have an impact on charities such as the National Trust	<b>Comments</b>  “5 year license would make more sense. Less admin on both sides”  “3 years is a reasonable length of time. Please bear in mind that organisations such as National Trust for Scotland do have staff changes more frequently than a single sole owner.”  “3 years is OK. What is of considerable worry is how much these licences are going to cost as there is such huge variation with all the different Councils who have been setting sometimes extortionate fees. Set the fee disproportionately high and a lot of	Having considered the comments it is considered reasonable that licences will be granted for a three-year period in line with HMO licences and Landlord Registration.  The council has power to serve enforcement notices on licence holders who do not comply with the conditions and ultimately has the power to suspend or revoke licences. It is therefore not considered necessary to have annual renewals in case there are problems.  It is not considered that there has been a sufficient case made from departing from the three-year licence proposal. Therefore, no changes will be made to the policy in relation to the duration of a licence.  Regarding the comments about change of ownership requiring new applications this is indeed the case and the council realises that this could be considered unworkable from a business

		<p>who have staff changes more frequently than this. Some highlighted that annual reviews may be beneficial if there are frequent disturbances.</p>	<p>short let operators will either opt to give up or go out of business. The Association of Scotland's Self - Caterers (I am a Director) is already witnessing this trend. Scotland and our area needs to encourage visitors. Not everyone wants to stay in hotels, which seems to be the preference of the Scottish Government”</p> <p>“Could the renewal of the licence not be longer than 3 years if the first 3 years of licencing have gone without any problems.”</p> <p>“I think they should be reviewed annually, after consulting neighbouring properties who may be suffering disturbances in the preceding period”</p> <p>“For home sharing, the licence should be longer as there is unlikely to be much change if the same owners are living there.”</p> <p>“Change of ownership should require a fresh application”</p>	<p>continuity perspective. It is hoped that the government will consider this issue when reflecting on whether any changes need to be made following the introduction of this licensing scheme.</p>
<p>9.</p>	<p>Should children under 2 count towards occupancy figures for a short-term let?</p>	<p>19</p>	<p><b>Comments</b></p>	

		<p>10 (53% agreed with the proposed policy)</p>	<p>“Because they don't use a bed. I provide a travel cot and don't think of a baby as an additional guest as they usually sleep in the same room as their parents”</p> <p>“A cot can be used and is occasional use not a permanent bed. They are very small!”</p> <p>“Under twos don't take up much room. Young families should not be penalised”</p> <p>“I was surprised that the occupancy numbers are strict. I have a one bedroom flat and one double sofa bed in the lounge yet I can only have 1 guest in the lounge. My lounge is double the size of my bedroom. It means I can no longer accept 4 guests even if 2 are young children.”</p>	<p>The occupancy limits are established with consideration of the requirements regarding overcrowding contained within the Housing (Scotland) Act 1987 for domestic dwellings. The Act sets limits where children under one are not counted, and children between 1-10 years old count as a 0.5 person. It was considered that short term let properties would not be permanent residency and therefore to be more accommodating and practical there was some scope to adapt this and consider that children under 2 years would not count towards occupancy.</p> <p>Children under 2 years can be accommodated easier in a temporary cot, or small bed etc. Children over 2 years would be considered as counting towards occupancy and require appropriate provision to be in place for sleeping arrangements. Unlike the Housing Act which counts children under 10 as 0.5 of a person, we took the decision to consider them as a whole person. The approach taken appears to be in line with that of other local authorities.</p>
<p>10.</p>	<p>Do you have any further comments on the Draft Short-term Lets Policy?</p>	<p>10</p>	<p><b>Comments</b></p> <p>“Policy is fine. Only point I would make is if change of use planning permission is required for flat then there should be a cradle to death process that allows planning permission and license to be applied for in one submission. Also</p>	<p>The government has introduced a licensing scheme for short-term lets and this is under separate legislative provisions from planning legislation. These are therefore two separate issues in law and the council cannot therefore combine the two schemes.</p> <p>Guidance on planning applications for short-term lets is available on the council's website.</p>

			<p>nothing to do STL license but rules around change of use planning should be spelt out. I.e if a flat is not going to be given change of use planning permission this should be spelt out to save people wasting time applying for planning permission”</p> <p>“Please consider how a corporate entity such as National Trust for Scotland apply - there are numerous issues with the other councils that have already started the process. Issues with faulty online forms, forms written that don't even consider a charity. Also consider how a charity pays for the licence Bank transfer is ideal.”</p> <p>“Most I have made earlier. But I do re-iterate, whenever possible, employing the light touch I recall you mention earlier somewhere. especially with self-caterers who have been operating successfully for years. And concentrate your efforts on the many who have been operating under the radar for years with anonymous listings on listing sites where thy feel their properties cannot be identified due to their anonymity.”</p>	<p>The council intends introduce a system of online payments for this licensing scheme in order to keep costs to a minimum.</p> <p>The application form which is being finalised will allow applications to be made by organisations.</p> <p>The policy does make it clear that the council will adopt a risk-based system where risk assessments will influence several aspects of the scheme. The general approach of the council is stated in the policy to be 'light touch'.</p> <p>Steps will be taken by the council to seek to identify premises which required to be licensed. In future, once the scheme is fully operational, it will be possible for the public to identify unlicensed premises as it is a mandatory condition that a listing or advert must display a licence number. Potential unlicensed premises can then be reported to the body responsible for enforcement of the scheme i.e. Police Scotland.</p>
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			<p>“I agree in principle to being licensed. It should raise the standard of rental accommodation available. The landlord registration however has less conditions yet people stay in rented accommodation for longer periods. When changing from long term letting to short term it was surprising there were no set conditions to meet or indeed a register of accommodation. However, as I am trying to prepare my application I am finding it very complicated and quite confusing. I now appear to require planning permission for a flat that has been operating as a business for 4 years. All the gas safety test certificate and electrical testing required is sensible and reassuring for guests and owners. I assume when you open the application there will be templates for the fire assessments and legionella risk assessments for the owners to complete. I have had to get an EPC done as I have owned my property for 25 years and didn't have one. (The property was once my home and was not bought for rental accommodation). I may need plans drawn up for a floorplan too.</p>	<p>The decision to introduce a licensing scheme rather than a registration scheme was made by the government.</p> <p>Councils are obliged to publish lists of premises covered by short-term let licences.</p> <p>There is a link to detailed government guidance on the council's Short-term Let webpage regarding how to obtain the documents which are required to uploaded with applications.</p> <p>The legislation does not allow the council to impose a minimum stay condition.</p> <p>See the comments above regarding enforcement.</p>
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			<p>The whole process is actually quite costly and that is before the application fee. I think some clear instructions would be useful and perhaps contact details of people to assist. I think overall the rules, especially of flats should be transparent and clear. It is also important to remember the benefits of bringing tourism to Linlithgow on the local community and the local businesses. As Linlithgow has no large hotels the self-catering business is crucial in attracting tourists from all over the world. Lots of my guests have been really impressed with Linlithgow and the surrounding area. This year has seen a return of many international and domestic guests and next year is also looking good already. Hopefully Linlithgow will become even more attractive as it would appear the strict conditions in Edinburgh will greatly reduce the accommodation available there. It is obviously understandable that a balance must be met with other residents. However, as I operate my business myself I now visit weekly, unlike when I was a landlord and relied on an agent to inspect my property. We have already made</p>	
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			<p>significant improvements to some communal spaces interior and exterior with the agreement of other owners and tenants. It is beneficial to all living there. I would suggest that perhaps a minimum stay may be considered. Guests coming and going daily would obviously be more disruptive to an area. It would be good to know if you intend informing all existing rental accommodation operators about the STL requirement and indeed how you will monitor those who may operate without a license.”</p>	
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## Short-term Let Licensing Fee Schedule

<u>Type of Application</u>	<u>Fee</u>
Home Sharing/Home Letting/Home Sharing and Letting (1 Bedroom)	£325
Home Sharing/Home Letting/Home Sharing and Letting (2-3 Bedrooms)	£420
Home Sharing/Home Letting/Home Sharing and Letting (4-6 Bedrooms)	£595
Home Sharing/Home Letting/Home Sharing and Letting (7+ Bedrooms)	£865
Secondary Letting (1 Bedroom)	£450
Secondary Letting (2-3 Bedrooms)	£550
Secondary Letting (4-6 Bedrooms)	£720
Secondary Letting (7+ Bedrooms)	£1,000
Variation to Licence	£150
Temporary Licence <sup>1</sup>	50% of the full licence cost
Temporary Exemption	£300
Inspection and Report <sup>2</sup>	£120

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<sup>1</sup> If an application is made for a full licence during the application period for a temporary licence for the same premises or during the period of effect of the temporary licence the fee paid for the temporary licence will be deducted from the full licence application fee.

<sup>2</sup> An inspection fee will only be charged if the council deems it necessary to inspect premises following a complaint.